

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

DEC 29 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

VIRTUAL HIPSTER CORPORATION

CC Docket No. 00-247

Petition for Preemption of Jurisdiction  
of the Public Utilities Commission of Nevada  
pursuant to 47 U.S.C. § 252(e)(5)

To: The Commission

**COMMENTS OF CHURCHILL COUNTY TELEPHONE AND TELEGRAPH  
d/b/a CC COMMUNICATIONS**

Churchill County Telephone and Telegraph d/b/a CC Communications ("CCC"), by counsel and pursuant to the provisions of 47 C.F.R. § 51.803(a)(3), as supplemented by the Commission's 1997 Public Notice<sup>1</sup> and the Commission's Public Notice establishing the pleading cycle herein,<sup>2</sup> hereby responds to the Petition for Preemption of Jurisdiction of the Public Utilities Commission of Nevada Pursuant to 47 U.S.C. § 252(e)(5) (the "Petition") filed by Virtual Hipster Corporation ("VH") on December 1, 2000. By its Petition, VH seeks this Commission's preemption of the jurisdiction of the Nevada Public Utilities Commission ("PUC") and assumption of the responsibility of a state commission to arbitrate an interconnection agreement between CCC and VH. The Commission has no statutory authority to

<sup>1</sup> *Supplemental Procedures for Petitions Pursuant to Section 252(e)(5) of the Communications Act*, 12 FCC Rcd 17478 (DA 97-2256, rel. Oct. 24, 1997).

<sup>2</sup> *Pleading Cycle Established for Comments on Virtual Hipster Petition for Preemption of Jurisdiction of the Public Utilities Commission of Nevada Pursuant to 47 U.S.C. § 252(e)(5)*, DA 00-2809 (rel. Dec. 12, 2000).

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entertain this matter. Accordingly, the Petition should be dismissed.

VH, by ignoring Nevada's delegation of regulatory jurisdiction over county-owned local exchange companies to County Commissions, to the exclusion of the PUC, presents the Commission with a case of first impression. VH's overly-simplistic explanation of the case notwithstanding, the Petition requires the Commission to determine whether it will preempt an entire regulatory framework pursuant to state statute. Under Nevada law and the Telecommunications Act of 1996,<sup>3</sup> the appropriate forum for arbitration of an interconnection agreement concerning CCC is the Board of County Commissioners of Churchill County, Nevada. Section 252(e)(2) was intended to establish a failsafe forum for interconnection arbitration, not, as VH would urge, a vehicle for forum shopping.

## **I. Procedural Background**

### **A. CCC is a rural telephone company, regulated by the County Commissioners of Churchill County, Nevada.**

In 1889, the Board of County Commissioners of Churchill County (the "Board") created Churchill County Telephone and Telegraph, d/b/a CCC, to provide telegraph service, and later expanded its purpose to bring exchange and exchange access service to the residents of Churchill County, Nevada. CCC, an enterprise fund of Churchill County, is a "rural telephone company," as defined by the Communications Act of 1934, as amended<sup>4</sup> (the "Act"). CCC was designated as an Eligible Telecommunications Carrier ("ETC") by the Board in 1997, and reported this

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<sup>3</sup> Pub.L.No. 104-104, 110 Stat. 56 (1996).

<sup>4</sup> 47 U.S.C. § 153(37).

status to the Commission.<sup>5</sup>

Under Nevada law, the “control, management and conduct of any [county-owned] telephone line or system” is vested in the relevant Board of County Commissioners.<sup>6</sup> Nevada law also specifically excludes from the jurisdiction of the PUC the “regulation and control” of county-owned utilities, including telephone companies.<sup>7</sup> The Board and the PUC have recognized and acted upon this legislatively-mandated jurisdictional design consistently throughout CCC’s history. In recognition of the requirements of efficiency and efficacy, however, CCC, at the direction of the Board, has, from time to time, consented to participate in certain PUC proceedings for limited and specific purposes. At no time, however, has the Board relinquished regulatory jurisdiction with respect to the intrastate operation of CCC.

**B. CCC and VH have been unable to reach agreement regarding interconnection arrangements.**

CCC and VH have, since 1997, engaged in discussions regarding interconnection arrangements. Disagreements between the parties regarding CCC’s rural exemption led to VH’s filing a petition with the PUC for removal of the exemption in November, 1997, which CCC opposed, *inter alia*, on the grounds that the PUC lacked jurisdiction. On March 6, 1998, during a hearing before the PUC,<sup>8</sup> the parties agreed to resume voluntary negotiations, to result in agreements with respect to resale and unbundled network elements (“UNEs”). In addition, the

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<sup>5</sup> See Letter of James Regan, Chairman, Board of County Commissioners to Sheryl Todd, December 29, 1999, Attachment 1.

<sup>6</sup> Nev. Rev. Stat. § 710.140.

<sup>7</sup> Nev. Rev. Stat. § 704.020.

<sup>8</sup> See Transcript of Proceedings, Docket No. 97-11017 (Nev. PUC, Mar. 6, 1998), Attachment 2.

parties agreed that VH was “free to restart the 252 clock”<sup>9</sup> with respect to such negotiations. VH withdrew its petition, and the PUC closed the docket without issuing an order.

Following this agreement, the parties ultimately concluded negotiations with respect to discounted resale arrangements, but as yet have been unable to reach agreement with respect to UNEs. CCC had, in May, 1999, presented a detailed proposal regarding UNEs. VH responded over six months later, that it was “prepared to resume the process of negotiating UNE rates.”<sup>10</sup> Detailed discussions ensued, distilling, in August, 2000, into pointed disagreement regarding the propriety of deaveraging rates for UNEs. Although the parties ostensibly were continuing discussions, VH, without notice to CCC, filed a petition with the PUC on October 5, 2000, seeking arbitration.

## **II. The Commission lacks jurisdiction over this matter.**

VH, having failed to seek arbitration from the appropriate and duly-constituted state Commission, the Board of County Commissioners of Churchill County, Nevada, cannot invoke the jurisdiction of this Commission. Simply put, there has been no “failure to act” under Section 252(e)(2) of the Act. In the absence of the necessary statutory precondition, the Commission is without authority to entertain the Petition. Even assuming, *arguendo*, that the Petition is properly lodged, it is procedurally defective because it is based upon an untimely petition for arbitration filed with the PUC.

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<sup>9</sup> *Id.* at p. 4.

<sup>10</sup> *See* letter of November 21, 1999 from Shad L. Nygren, President of VH, to Don Mello, General Manager of CCC, Attachment 3.

**A. “Preemption” is unavailable where jurisdiction never existed.**

VH “requests a finding by the Commission that the denial by the [PUC] sufficiently satisfies the condition under 47 USC § 252(e)(2), thereby requiring preemption of the state commission’s jurisdiction and assumption of the responsibility of the state commission.”<sup>11</sup> In fact, as evidenced by the PUC’s Order,<sup>12</sup> there is nothing to “preempt,” because the PUC denied the VH petition for arbitration based upon the “lack of jurisdiction by this Commission over Churchill County Telephone Company d/b/a CC Communications, Inc.”<sup>13</sup>

As recognized by the PUC, the Board of County Commissioners of Churchill County, Nevada has, and retains, exclusive jurisdiction over the terms and conditions of local service and rates.<sup>14</sup> Although CCC consented to the PUC’s ability to arbitrate interconnection arrangements with VH in an attempt to reach an expeditious resolution to the protracted negotiations with VH, CCC specifically confined its submission to the PUC’s jurisdiction to the arbitration of the subject interconnection agreement. At no time has the Board abdicated its role or responsibilities regarding its regulatory authority over CCC, nor has CCC or even the PUC suggested otherwise. The PUC’s Order merely confirms the jurisdictional facts and declines VH’s request, and CCC’s invitation, to act as a neutral third party arbitrator. Accordingly, the PUC’s Order does not satisfy the statutory precondition that a State commission “fail to act,” as required by 47 U.S.C. § 252(e)(2). Under the circumstances, there is no statutory basis for the Commission’s

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<sup>11</sup> Petition at p. 1.

<sup>12</sup> *See*, Order of the Public Utilities Commission of Nevada, Docket No. 00-10009, attached to Petition as Exhibit A (the “Order”).

<sup>13</sup> *Id.* at p. 3.

<sup>14</sup> *Id.* at p. 2.

assumption of jurisdiction in this matter.

VH does not even allege that the appropriate State commission “failed to act” in a timely manner or that the appropriate State commission rendered decisions in an untimely manner, the prerequisites for Commission action under Section 51.801(b) of the Commission’s Rules.<sup>15</sup> Instead, VH urges this Commission to assume jurisdiction in direct contravention of its careful and precise explanation of its own statutory authority. As the Commission has stated specifically,

a state commission does not “fail to act” when it dismisses or denies an arbitration petition on the ground that it is procedurally defective, the petitioner lacks standing to arbitrate, *or the state commission lacks jurisdiction over the proceeding*.<sup>16</sup>

Inasmuch as the PUC actively disclaims jurisdiction, its Order cannot serve as a basis for the Commission’s preemption of jurisdiction which does not exist. Moreover, there exists no vacuum of authority – the Board constitutes the authorized and appropriate arbitrator under the Act. Unless and until the Board “fails to act,” there is no basis for the Commission’s preemption pursuant to Section 252(e)(2).

**B. The Board is the appropriate arbitrator.**

Pursuant to Nevada law, the Board constitutes the appropriate “State commission,” under the Act. The Act defines the term “State commission” as

the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.<sup>17</sup>

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<sup>15</sup> 47 C.F.R. § 51.801(b).

<sup>16</sup> *Low Tech Designs, Inc.*, 9 CR 1146, 1156 (1997) (emphasis supplied).

<sup>17</sup> 47 U.S.C. § 153(41).

As Petitioner itself confirms, the PUC does not have jurisdiction over CCC. CCC is a county-owned entity which, under the laws of the State of Nevada, is regulated by the Board. Nevada has vested the authority to regulate local telecommunications services in those county commissions choosing to establish county-owned telephone companies. Just as the Nevada PUC derives its authority from statute, so, too, do the county commissions. The Board, therefore, satisfies the Act's definition of a "State commission" because, pursuant to Nevada law, it has "regulatory jurisdiction with respect to intrastate operations" of CCC.

VH's concerns with respect to arbitrating its case before the Board, the ultimate owner of CCC, are speculative and unfounded. CCC has maintained consistently that the Board is fully capable of conducting an impartial review.<sup>18</sup> CCC is confident that the Board will, as do other state commissions, conduct the arbitration pursuant to standards established by the Act. Moreover, in conformance with the established statutory procedure, VH will, if necessary, have recourse to the courts if it is aggrieved by a Board decision. The position of the Board as owner/regulator is not an impediment to the orderly functioning of the statutory design, nor does this dual role confer upon the Commission a greater, or even different, statutory role.<sup>19</sup>

### **C. VH's Petition for Arbitration Was Untimely.**

VH's unilateral declaration of the time frame for the filing of its petition for arbitration with the PUC raises yet another procedural barrier to its request that this Commission assert

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<sup>18</sup> VH itself has previously accepted the Board's role and determinations with respect to another interconnection element – the establishment of a resale rate. Section 252(d) of the Act clearly specifies that resale pricing is to be established by the state "commission."

<sup>19</sup> Statutory precision is required to warrant federal interference with State regulation of a political subdivision. *Gregory v. Ashcroft*, 501 US 452 (1991). Under Section 252(e)(2), the Commission enjoys a specific grant of authority to preempt only where the appropriate commission "fails to act."

jurisdiction with respect to arbitration proceedings. Having dismissed the arbitration petition on jurisdictional grounds, the PUC did not reach CCC's arguments regarding VH's timing defects. As noted above, CCC had agreed that VH was "free to restart the regulatory clock" It was, however, only upon the filing of its October 5, 2000 petition with the PUC that VH attached any significance to the date of April 28, 2000, which VH therein arbitrarily designated as the "start date" for the computation of arbitration time frames pursuant to the Act. CCC's acquiescence to the VH's exercise of discretion did not extend to an arbitrary, unilateral, and after-the-fact designation of the initiation date. CCC did not agree to a "secret" or unknowable clock, and such an interpretation not only contradicts basic precepts of fair dealing, but also defeats the Act's purpose in devising a known negotiation period within which parties work toward resolution.

Moreover, the purported negotiation request of April 28, 2000 which VH claims initiated the statutory time frame was, in actuality, a response by a CCC consultant to an April 25, 2000 message from a VH consultant, continuing the dialogue regarding UNE rate elements and devoid of any reference to a request for negotiation.<sup>20</sup> The April 25, 2000 message was sent via electronic mail and likely received on the same day. Since the April 25<sup>th</sup> message was sent electronically and likely received on the same day, the petition to the PUC for arbitration is late, having been filed on the 163<sup>rd</sup> day.

Under either theory of tardiness, the petition for arbitration failed to meet the statutory deadline; neither the PUC, nor, by extension, this Commission, has jurisdiction to entertain an untimely request for arbitration. The Commission has held that statutory deadlines, specifically

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<sup>20</sup> See message from Ben Harper (CC consultant) to Larry Blank (VH consultant) dated April 28, 2000 in response to message from Mr. Blank on April 25, 2000, Attachment 4.



the deadlines contained in Section 252 of the Act, cannot be waived or extended except in very limited circumstances.<sup>21</sup> Those circumstances are not present in this case.


### **III. Conclusion**

Correct application of both Nevada law and the Act points to the Board as the appropriate forum for arbitration of the subject interconnection arrangements. The Commission should, as did the PUC, dismiss this petition for lack of jurisdiction.

Respectfully submitted,

CHURCHILL COUNTY TELEPHONE COMPANY  
d/b/a CC COMMUNICATIONS, INC.

By:

  
Stephen G. Kraskin  
Sylvia Lesse

Its Attorneys

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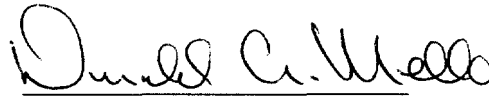
December 29, 2000

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<sup>21</sup> *Armstrong Communications, Inc.*, 11 CR 317 (Common Car. Bur., 1998), *recon.* denied, 14 FCC Red 9521 (Common Car. Bur., 1999).

## DECLARATION OF DONALD A. MELLO

I, Donald A. Mello, General Manager of Churchill County Telephone & Telegraph d/b/a CC Communications ("CCC"), do hereby state that I have read the foregoing Comments of Churchill County Telephone & Telegraph d/b/a CC Communications. I certify under penalty of perjury that the facts presented therein are true and correct.



Donald A. Mello  
General Manager

12-27-00

Date

# Attachment 1



Office of the  
Churchill County Commissioners  
10 West Williams Avenue  
Fallon, Nevada 89406

December 29, 1997

Sheryl Todd  
Federal Communications Commission  
Universal Service Branch, CC Docket 96-45  
8<sup>th</sup> Floor, 2100 M Street, N.W.  
Washington, D.C. 20554

The Board of County Commissioners of Churchill County Nevada (County Commission), as the governing regulatory authority for Churchill County Telephone & Telegraph System (CCT&T), hereby finds, designates, and certifies:

1. CCT&T has filed, and the County Commission has approved, revisions to its Lifeline and Linkup tariffs that incorporate the provisions required by the FCC Decision 97-157 on revised universal service requirements and procedures. The County Commission has approved the \$1.75 intrastate rate reduction reflecting the new federal support as of January 1, 1998.
2. The County Commission finds that CCT&T is a rural telephone company within the definition of the Telecommunications Act of 1996 and designates CCT&T as an eligible telecommunications carrier for its entire study area under 47 CFR Section 54.201. The County Commission finds that CCT&T offers the required services specified in Section 54.101 throughout its study area and advertises the availability of and the charges for such services as required in Section 54.201. Due to the unavailability to CCT&T and other similar carriers of the technology required to offer the "toll control" component of the toll limitation service, the County Commission finds that exceptional circumstances exist that justify a 36-month waiver of the toll control requirement and grants CCT&T such a waiver until January 1, 2001.

Sincerely,

A handwritten signature in dark ink, appearing to read "James Regan".

James Regan  
Chairman

Board of County Commissioners

# Attachment 2

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

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In re petition of to obtain )  
Interconnection Agreement with )  
Churchill County Telephone and )  
Telegraph System and to terminate )  
the rural exemption of Churchill )  
County Telephone and Telegraph )  
System pursuant to 47 U.S.C. )  
251(f). )

Docket No. 97-11017

TRANSCRIPT OF PROCEEDINGS

HEARING

11:22 a.m., Friday  
March 6, 1998

Offices of the Public Utilities Commission  
727 Fairview Drive  
Hearing Room A  
Carson City, Nevada 89710

Reported by:

JERRY J. SILVEN, CCR #55

## APPEARANCES:

Commissioners Present:

TIMOTHY HAY  
Commissioner and  
Presiding OfficerCommissioner's  
Administrative Attorney:

DAVID NOBLE

For Virtual Hipster  
Corporation:CROWELL, SUSICH, OWEN &  
TACKES, LTD.  
Attorneys at Law  
by STEVEN E. TACKES, ESQ.  
510 West Fourth Street  
P. O. Box 1000  
Carson City, Nevada 89702For the PUCN Regulatory  
Operations Staff:LAWRENCE J. STRATMAN, ESQ.  
Assistant Staff Counsel  
727 Fairview Drive  
Carson City, Nevada 89710For Churchill County  
Telephone and  
Telegraph System:BECK & ACKERMAN  
A Professional Corporation  
by JEFFREY F. BECK, ESQ.  
Suite 760  
Four Embarcadero Center  
San Francisco, CA 94111

1 CARSON CITY, NEVADA, FRIDAY MARCH 6, 1998, 11:22 A.M.

2 -o0o-

3 COMMISSIONER HAY: Good morning, everybody.

4 Let's go back on the record in Docket  
5 97-11017, and the hearing will come to order.

6 Let the record reflect this is the time and  
7 place set before the Public Utilities Commission of  
8 Nevada for a hearing in the matter of the petition of  
9 Virtual Hipster Corporation to terminate the rural  
10 exemption of Churchill County Telephone and Telegraph  
11 System pursuant to 47 U.S. C. 251(f)

12 The matter is more fully described as  
13 Docket Number 97-11017.

14 And appearing for the Commission today is  
15 Timothy Hay, Commissioner and Presiding Officer, and  
16 David Noble, my Administrative Attorney.

17 And we'll take appearances from the  
18 parties.

19 Appearing for Virtual Hipster Corporation?

20 MR. TACKES: Steven E. Tackes, Crowell,  
21 Susich, Owen & Tackes, and with me is Shad Nygren of  
22 Virtual Hipster.

23 COMMISSIONER HAY: Nice to see you again.

24 And for Churchill County Telephone and  
25 Telegraph?



1 MR. BECK: Jeffrey Beck of Beck & Ackerman.  
2 And with me is Earl Bishop, Dale White and Don Mello.

3 COMMISSIONER HAY: Nice to see all of you.  
4 And For the Regulatory Operations Staff of  
5 the Commission?

6 MR. STRATMAN: Lawrence J. Stratman,  
7 Assistant Staff Counsel. And Dr. Larry Blank, Manager of  
8 the Regulatory Policy Division of Staff.

9 COMMISSIONER HAY: Nice to see both of you.  
10 And are there any others who wish to enter  
11 an appearance?

12 (No verbal response.)

13 COMMISSIONER HAY: There appear to be none.  
14 And the record will reflect that the  
15 Commission has in its files affidavits of publication  
16 regarding the notice of this hearing for this time and  
17 place.

18 Are there any parties to the proceeding who  
19 have any questions on the notice or who wish to examine  
20 the affidavits on file?

21 (No verbal response.)

22 COMMISSIONER HAY: There appear to be none,  
23 therefore the Commission deems that the hearing is  
24 properly noticed for this time and place.

25 And are there any preliminary matters which

1 should be brought to the attention of the Commission  
2 before we proceed?

3 MR. STRATMAN: Yes, Commissioner.

4 COMMISSIONER HAY: Mr. Stratman.

5 MR. STRATMAN: The parties, Churchill and  
6 Virtual Hipster, have had an opportunity to discuss some  
7 of the issues that have existed between them, and have  
8 come to an agreement regarding further proceedings here  
9 before the Commission. And I will go ahead and make an  
10 effort at enumerating what those are.

11 The first significant hurdle that has been  
12 overcome is that Churchill County will not exert any  
13 further its request for rural exemption.

14 In return, Virtual Hipster will withdraw  
15 its instant petition before this Commission, and will  
16 waive the time requirements under Section 252 of the Act  
17 for arbitration.

18 The parties have agreed to a 90-day time  
19 frame to agree to resale rates for certain services. If  
20 at the end of that 90-day time frame the parties are  
21 unable to reach an agreement for resale services, they  
22 have agreed to employ the services of a third-party  
23 mediator that would neither be this Commission or the  
24 Churchill County Commission; someone independent.

25 The parties have also agreed to negotiate

1 interim rates for unbundled network elements. And  
2 Churchill County has committed to unbundling its services  
3 and have unbundled network element prices a year from  
4 now. And in the interim, those interim rates for UNEs  
5 will be negotiated. And Virtual Hipster is free to  
6 restart the 252 clock for that purpose at any time it  
7 chooses.

8 The parties have also agreed to work  
9 cooperatively with each other for the location of  
10 equipment that Virtual Hipster would like to have at  
11 Churchill County's facilities. And Virtual Hipster has  
12 agreed to provide Churchill with projections as to how  
13 much space it believes it will need, and work  
14 cooperatively with Churchill in that regard.

15 And I think those are sort of the general  
16 principles involved.

17 Essentially what has happened is, is that  
18 the parties have agreed to, I think, sit down and try and  
19 work this out amicably. And both parties have certainly  
20 given up some significant issues, in particular on the  
21 part of Churchill with respect to not exerting the rural  
22 exemption anymore, and certainly on the part of Virtual  
23 Hipster by waiving the time period under 252 for the  
24 present.

25 And I think that's where we're at.

1                   Mr. Beck or Mr. Tackes may have more that  
2 they would like to add to the record, but I think that's  
3 where we are at.

4                   And then that also would alleviate this  
5 Commission and the parties from having to concern  
6 themselves with the jurisdictional issue that was of  
7 concern to the Churchill County.

8                   COMMISSIONER HAY: Thank you, Mr. Stratman.  
9 That sounds like a very reasonable accommodation and  
10 approach to the issue.

11                   Why don't we hear from Mr. Beck and from  
12 Mr. Tackes.

13                   MR. BECK: Commissioner, that correctly and  
14 fully describes the agreement that we've reached, and  
15 Churchill County Telephone is willing to resolve the case  
16 on that basis.

17                   COMMISSIONER HAY: Okay, thank you.  
18 Mr. Tackes.

19                   MR. TACKES: And that is the same for  
20 Virtual Hipster, Commissioner.

21                   COMMISSIONER HAY: All right. Let me ask  
22 Mr. Stratman or Mr. Beck or Mr. Tackes: Could you  
23 describe for me briefly how the third-party mediator will  
24 be selected, if that occurs?

25                   MR. STRATMAN: I don't know that the

1 parties had gotten to that level of detail. And Mr. Beck  
2 and Mr. Tackes may be more appropriate to speak to that,  
3 but my understanding was, was that between the two  
4 entities they would select a third-party mediator who  
5 would neither be this Commission or the Churchill County  
6 Commission. And I don't know if those two individuals  
7 has a thought as to who that would be.

8 MR. BECK: That was the only point I had  
9 when Mr. Stratman was going through it. Actually we  
10 talked about an arbitrator that would be a binding  
11 arbitration.

12 And I myself envisioned, I haven't talked  
13 to Steve about it, that being similar to a contract  
14 provision that the two parties must agree to find an  
15 arbitrator, without more being specif at this point.

16 COMMISSIONER HAY: All right. That sounds  
17 acceptable.

18 Mr. Tackes.

19 MR. TACKES: And we're agreeable to that.  
20 We don't believe that will be a problem, coming up with  
21 an arbitrator.

22 One thing I should add is that there is a  
23 possibility we might be back before this Commission; the  
24 withdrawal's without prejudice to any of the positions of  
25 the parties. And so we don't believe you need to enter

1 any kind of order at this point, particularly not on the  
2 jurisdictional issue, because that is one of the things  
3 that's obviated by our agreement.

4 And so I guess the bottom line is, we're  
5 not asking you to do anything else in this docket.

6 COMMISSIONER HAY: Let's go off the record  
7 for just a moment.

8 (Off the record.)

9 COMMISSIONER HAY: Let's go back on the  
10 record.

11 After our off-the-record discussion it has  
12 become apparent to me that the petitioner is willing to  
13 withdraw its petition without prejudice to any future  
14 rights that they may have, and that Churchill County and  
15 our Staff are amenable to that.

16 So without any further action of this  
17 Commission being necessary, we'll anticipate receiving a  
18 letter from Mr. Tackes at some point in the future  
19 formally indicating the desire to have the petition  
20 withdrawn.

21 At that point the Secretary of the  
22 Commission would be authorized to close the docket. And  
23 it is with the understanding that any of the parties to  
24 this proceeding may choose to revisit any of these issues  
25 with this Commission, if that becomes necessary in the

1 future.

2 But I appreciate the work that the parties  
3 have put into this. It has raised some interesting  
4 issues that perhaps will be better resolved through the  
5 voluntary cooperation than they might have been through a  
6 formal action of this Commission.

7 And I would like to thank everyone for  
8 their efforts. And we will close the record in Docket  
9 97-11017, with the exception of a letter to be received  
10 in the future from Mr. Tackes.

11 Thank you all very much.

12 MR. TACKES: Thank you.

13 MR. BECK: Thank you.

14 (The hearing was adjourned at 11:33 A.M.)

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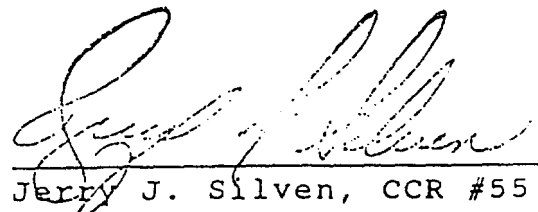
STATE OF NEVADA,           )  
                                  )  
COUNTY OF WASHOE.       )           ss.

I, JERRY J. SILVEN, Certified Court  
Reporter #56, do hereby certify:

That on Friday, February 20, 1998 at 10:10  
a.m., at 727 Fairview Drive, Carson City, Nevada, I was  
present and took stenotype notes of the hearing held  
before the Public Utilities Commission of Nevada in the  
within-entitled matter, and thereafter transcribed the  
same as herein appears;

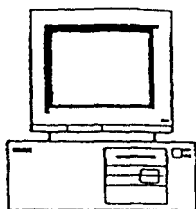
That the foregoing transcript is a full,  
true and correct transcription of my stenotype notes of  
said hearing.

Dated at Reno, Nevada, this 9th day of  
March 1998.

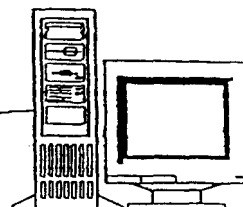
  
Jerry J. Silven, CCR #55



# Attachment 3



# VIRTUAL ∞ HIPSTER™



*Get Virtual*

Network Consultant

Competitive Local Exchange Carrier

Internet Service Provider

November 21, 1999

Mr. Don Mello,  
General Manager  
Churchill County Telephone  
50 W Williams Ave  
Fallon, NV 89406

**RECEIVED**

NOV 22 1999

CHURCHILL COUNTY  
TELEPHONE

Dear Don,

After some delay, Virtual Hipster is now ready to implement the process of reselling basic local exchange services as specified in Churchill County Telephone's Tariff #10. Virtual Hipster is also prepared to resume the process of negotiating UNE rates and co-locating the necessary equipment in Churchill County Telephone's facilities.

To test this process, we are submitting five requests to authorize Virtual Hipster Corporation to supersede Churchill County Telephone as service provider of Basic Local Exchange Services. Three of the requests are residential and two are business accounts. These five accounts will be transferred with the same services that they currently use. These are not new telephone accounts. Please note that two forms (Reseller Telephone Application for Business or Residential and Request for Supersedure) are being submitted for each request because it was not clear what the purpose for each form was.

In filling out the Reseller Telephone Application, it was noted that not all services are listed that are being utilized by these customers and these services should be added to the application form. Those services that are not listed on the application form are 1) Remote CF Access Bus, 2) Toll Restriction W/PIN Bus, 3) Premise Wiring Residence, 4) Directory Advertising, and 5) Federal Tax. The calculated resell amount for Items 1 & 2 is \$.44/month. In addition to the Residential and Business POTS service that you have already developed resale rates for, Virtual Hipster plans to resell Interexchange T1 Trunk and ISDN BRI/PRI services. Therefore, it will also be necessary to develop resale rates for these services.

The application form should include an option to choose a contractor to install telephone service, as Virtual Hipster is a licensed Nevada contractor #48082 and can perform this service. Hence, this charge should not be automatically included in Churchill County Telephone's bill to Virtual Hipster.

[hipster@hipster.net](mailto:hipster@hipster.net)  
[www.hipster.net](http://www.hipster.net)

**Microsoft Certified**  
**Professional**

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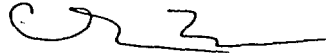
NV Contractors License #48082

Is Churchill County Telephone going to bill customers directly for Directory Advertising?

Virtual Hipster is developing an automated application form that can be electronically e-mailed or faxed to Churchill County Telephone. This will be not only cost effective but timely for all parties concerned. We would like to "get the ball rolling" asap on this test as Virtual Hipster is quickly moving towards its objective.

To facilitate the development of the UNE rates and other related matters Virtual Hipster has retained the services of Dr. Larry R. Blank, Ph.D, President and Chief Consultant with TAHOECONOMICS, LLC. Dr. Blank was formerly the Manager of Regulatory Policy with the Public Utilities Commission of Nevada and is an expert in the area of developing UNE rates and Nevada Public Utility Regulations. For purposes of correspondence he may be reached at P.O. Box 3722, Carson City, Nevada 89702-3722

Sincerely,



Shad L. Nygren,  
President

cc: Larry Blank, Ph.D.  
Steven E. Tackes, Esq.

# Attachment 4

**Larry Blank**

---

From: Ben <bharper@GVNW.COM>  
 To: <LBlankT1@aol.com>  
 Sent: Friday, April 28, 2000 9:00 AM  
 Subject: Re: Churchill County/Virtual Hipster

Larry, I am out of the office until late next week. The laptop I have does not have the model on it. I can't check your assumptions until Thursday or Friday next week. I will then be out of the office the following week. I wanted to get this message back to you to let you know I did receive it and will look at it in detail the first chance I get.

Ben

----- Original Message -----

From: <LBlankT1@aol.com>  
 To: <bharper@gvnw.com>  
 Cc: <stackes@advocacy.net>; <marilyn@hipster.net>; <hipster@hipster.net>  
 Sent: Tuesday, April 25, 2000 4:19 PM  
 Subject: Churchill County/Virtual Hipster

> Ben,

>

> It's been awhile since we talked. I'm still working on behalf of Virtual  
 > Hipster Corporation. Attached are UNE rates Virtual Hipster would propose  
 > (found in the "Unit Costs" tab) for Churchill County. We are still  
 working

> on rates for dark fiber available in interoffice transport and  
 nonrecurring

> (OSS) rates. Those attached are calculated by the HAI Model version 5.0  
 that

> I sent you. There are only three changes I made to the default values:

>

> 1. Set the Host-Remote Switch assignment.

> 2. Set the Income Tax Rate to zero.

> 3. Incorporated payments to the county in lieu of taxes by increasing the  
 > "Other Taxes" input to 8.2% which is slightly greater than the ratio of  
 > "Payments to County in lieu of taxes" (969,000) and "Total Operating  
 > Revenues" (11,874,203). These amounts were taken from Churchill County  
 > Telephone System Financial Statements, June 30, 1999, page 3.

>

> I do have concerns that the Cost of Capital input is relatively high given  
 > the construct of Churchill County Telephone Company but retained the  
 default

> value for Nevada (which was based on the FCC proxy) as a sign of good  
 faith

> offer.

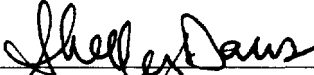
>

> I removed from the output the density zones without lines. I then

- > categorized the remaining 4 density zones as appropriate Rate Zones which are
- > intended to be consistent with the existing retail rate structure of
- > Churchill County.
- >
- > The primary purpose at this time is to ensure you can replicate my results.
- > Please call or e-mail if you have any questions.
- >
- > Thanks,
- > Larry Blank
- > 775-720-4031
- >

## CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of Churchill County Telephone and Telegraph d/b/a CC Communications" was served on this 29<sup>th</sup> day of December 2000, by first class, U.S. mail, postage prepaid to the following parties:

  
Shelley Davis

Janice M. Myles \*  
Common Carrier Bureau  
Federal Communications Commission  
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Washington, DC 20554

International Transcription Services, Inc. \*  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room CY-B402  
Washington, DC 20554

\* Via Hand Delivery

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Public Utilities Commission  
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Carson City, NV 89701-3109

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